WP(C) 1648/2005
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA

The matter relates to settlement of fishery by the respondent Corporation. The fishery in question is No. 43/44 Sunduva/ Pavakati Fishery, Lahorighat, Morigaon. The settlement is for a period of seven years. While the petitioner offered Rs. 7,30,000/-, the respondent No. 3 offered Rs. 6,67,000/-. As per the NIT, tenderer was to submit an affidavit in the prescribed format. The affidavit was to be submitted by way of certain undertakings relating to personal inspection of the fishery not making any claim for remission or reduction of revenue etc. Admittedly the tender submitted by the respondent No. 3 did not accompany the affidavit.

Altogether 7 tenderers were in the fray and the petitioner became the highest tenderer at his aforesaid bid value, while the respondent No. 3 became the 3rd highest bidder.

In spite of the aforesaid position when the settlement was made in favour of the respondent No. 3 at an annual revenue of Rs. 7,12,000/- for the period from 2008-2009 to 2014-2015, i.e. upto 31.03.2015, the petitioner became aggrieved and filed the writ petition. As per the affidavit in opposition filed by the respondents, the settlement has been made upon proper assessment of the tender submitted. They have questioned the term deposit receipt of the Bank submitted by the petitioner alongwith his tender as security money. As regards non-furnishing the affidavit by the respondent No. 3, it has been stated that since the respondent No. 3 submitted the same subsequently, the defect in the tender got rectified.

In the affidavit in reply, it is the specific plea of the petitioner that as per the requirement of the tender condition, the petitioner had submitted call deposit towards earnest money and the plea of the respondents that he did not submit call deposit is incorrect.

I have heard Mr. A.K. Goswami, learned counsel for the petitioner as well as Mr. A.M. Buzarbaruah, learned counsel for the respondent No. 3. I have also heard Dr. B. Ahmed, learned Standing counsel, Assam Fishery Development Corporation. I have also gone through the records produced by him.

On perusal of the records what has transpired is that the plea in the affidavit in opposition filed by the respondent Corporation relating to call deposit of the petitioner is absolutely incorrect. I have personally verified the call deposit which is absolutely in order in terms of the tender condition.

After the tenders were evaluated and comparative statement etc. were prepared, same was processed for settlement vide note dated 13.03.08 initiated in file No. AFDC-979/08. While processing the matter, there was threadbare discussions relating to tender submitted and amounts quoted by the different tenderes. It was found that the tender submitted by the petitioner was in order and he was also the highest bidder. His call deposit was also verified and found to be in order.

On the basis of further notes in the file, the matter was processed toward making settlement in favour of the petitioner he being the highest valid tenderer. However, the matter took about turn when the same was placed before the Chairman of the Corporation who occupies the position by virtue of being a Minister. He opined that the petitioner has submitted only fixed deposit receipt and not call deposit receipt. Consequently he took the decision that the settlement should be made in favour of the respondent No. 3 without, however, dealing with the defect in the tender because of non-furnishing the aforesaid affidavit. After such observation made by the Chairman, the matter was further processed and it was again pointed out that in fact, the petitioner had made the call deposit which is clearly evident on the body of the FDR, as per the endorsement made by the Bank authority itself deciding the same as call deposit. However, when the matter was again placed before the Chairman, he only opined that his earlier order should be followed and the order of settlement should be passed on that day itself. Such note was given on 23.04.08 pursuant to which the impugned order dated 23.04.08 (Annexure-C) was issued in favour of the respondent No. 3.

While Mr. Buzarbaruah, learned counsel for the respondent No. 3 has justified the action of the Chairman of the Board stating that since the security deposit of the petitioner was in the form of FDR and not call deposit, the tender submitted by the petitioner was defective. On the other hand, Mr. Goswami, learned Sr. counsel for the petitioner submits that it is the tender of the respondent No. 3 which was defective which fact being an admitted one, the respondent Corporation ought not to have entertained the tender submitted by the respondent No. 3. The fact that the respondent No. 3 did not submit the affidavit, is an admitted one. The affidavit was submitted at a later point of time. Thus, there is non fulfillment of the conditions of tender. As has been held by the Division Bench of this Court reported in 2003 (3) GLT 503 (Bijubari Multipurpose Development Society vs. State of Assam and others), the NIT and tender form are not to be read separately. The tender form is to be filled up in accordance with the requirements of the form. The offer made by a tenderer must be unconditional for the purpose of invoking acceptance. The provision for affidavit was made in the NIT towards fulfillment of certain preconditions. Such affidavit having not been submitted by the respondent No. 3, its tender was defective.

Apart from above, the records have also revealed that the respondent No. 3 Society authorized both the Chairman and the Secretary of the Society to respond to the NIT, but it is only the Chairman who represented the Society towards submission of tender. This aspect of the matter although finds mention in the notings of the file, but the authority did not deal with the same.

Once it is found that the tender submitted by the petitioner was a valid one which fact is amply demonstrated in the relevant file, but for the intervention of the Minister who acted by virtue of his position as the Chairman of the Corporation, the petitioner would have got the settlement which would have also earned more revenue for the Corporation. However, the Corporation could not do anything in the matter in view of the unjust and illegal intervention in the matter by the Chairman.

The above infirmity in the matter and the kind of materials on record demand settlement of the fishery with the petitioner. There is no question of remanding the matter back to the respondent Corporation as has been suggested by Dr. B. Ahmed, learned counsel for the respondent Corporation. There is nothing more to be decided in the matter. The case is clinching in favour of the petitioner. The whole basis of putting the cloud on the petitioner is the particular note of the Chairman except which all the officers of the respondent Corporation accepted that the tender submitted by the petitioner is a valid one including the call deposit. After the decision of the Chairman to settle the fishery at the lower rate with the respondent No. 3 when the fact that the tender and the call deposit of the petitioner being valid was against brought to his notice, the Chairman simply brushed aside the same without discussing the matter and insisted that the fishery be settled with the respondent No. 3 and the order be passed on that day itself. Naturally what could follow on that basis was that the impugned order was issued on the same date with the noting that the Chairman expressed his desire for settlement of the fishery in favour of the respondent No. 3. Such action cannot withstand the scrutiny of this court under Certiorari jurisdiction.

In view of the above, the writ petition is allowed. The impugned order dated 23.04.08 is set aside and quashed with the further direction to settle the fishery with the petitioner as his quoted rate for the specified period. Necessary follow up order shall be passed forthwith.

The writ petition is allowed. However, there shall be no order as to costs.